

EXHIBIT 3

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4 BUNGIE, INC.,

5 Plaintiff,

6 vs.

No. 2:21-cv-811-TSZ

7 AIMJUNKIES.COM; PHOENIX DIGITAL
8 GROUP LLC; DAVID SCHAEFER;
9 JORDAN GREEN; JEFFREY CONWAY;
10 and JAMES MAY,

11 Defendants.
12 _____/

13 VIDEOTAPED DEPOSITION OF BRAD LAPORTE
14 (via Zoom videoconference)

15
16 DATE: September 28, 2023

17 TIME: 7:33 a.m. - 1:52 p.m., PST

18 LOCATION OF WITNESS: Juno Beach, Florida

19 TAKEN BY Deborah Carmela Dew, FPR
20 Notary Public, State of Florida

21
22
23
24
25 JOB NO.: 1020122

CERTIFIED COPY

BRAD LAPORTE - 09/28/2023

Page 2

1 A P P E A R A N C E S:

2
3 FOR THE PLAINTIFF: (via Zoom videoconference)

4 JACOB P. DINI, ESQUIRE
5 Perkins Coie LLP
6 1201 Third Avenue
7 Suite 4900
8 Seattle, Washington 98101
9 206.359.8000
10 jdini@perkinscoie.com

11 FOR THE DEFENDANTS: (via Zoom videoconference)

12 PHILIP P. MANN, ESQUIRE
13 Mann Law Group PLLC
14 403 Madison Avenue North
15 Suite 240
16 Bainbridge Island, Washington 98110
17 206.855.8839
18 phil@mannlawgroup.com

19 Also Present via Zoom videoconference:

20 Sean Lykken, CLVS, Videographer
21 James Barker, In-house counsel, Bungie, Inc.
22 David Schaefer
23 Jordan Green
24 Ed Kaiser, PhD
25

BRAD LAPORTE - 09/28/2023

Page 3

1 I N D E X

2

3 WITNESS

PAGE

4 BRAD LAPORTE

5 Direct Examination by Mr. Dini

5

6

7 CERTIFICATE OF OATH

191

CERTIFICATE OF REPORTER

192

8 ERRATA PAGES

193-194

9

10 E X H I B I T S

11 PLAINTIFF'S

DESCRIPTION

PAGE

12 Exhibit 1 (Expert Report of Brad LaPorte)

10

13 Exhibit 2 (Tool ReClass digest)

41

14 Exhibit 3 (Expert Report of Scott A. Kraemer)

97

15 Exhibit 4 (Memory dump of notepad.exe)

117

16 Exhibit 5 (Bates 0000410 - document reviewed
in preparing Brad LaPorte's expert
17 opinion)

132

18 Exhibit 6 (Microsoft Process Monitor)

157

19 Exhibit 7 (Excel Spreadsheet)

176

20 Exhibit 8 (Counterclaim Exhibit D)

184

21

22 S T I P U L A T I O N S

23 It is hereby stipulated, by and between counsel for
 24 the respective parties and the witness, that the reading
 25 and signing of this deposition is hereby reserved.

BRAD LAPORTE - 09/28/2023

Page 4

1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This is the deposition of
3 Brad LaPorte in the matter of Bungie Inc., versus
4 Aimjunkies.com, et al, in the U.S. District Court,
5 Western District of Washington at Seattle. Case
6 number is 2:21-cv-811-TSZ.

7 Today's date is September 28th, 2023, and the
8 time is 7:33 Pacific. This deposition is taking
9 place remotely and was noticed by Jacob Dini.

10 Video operator today is Sean Lykken of Central
11 Court Reporting. Address is 1700 7th Avenue, Suite
12 2100, Seattle, Washington 98101. Phone number is
13 206-682-5896.

14 The court reporter today is Deborah Carmela Dew
15 on behalf of Central Court Reporting. The reporter
16 will swear in the witness, but first would the
17 attorneys voice identify themselves and state whom
18 they represent and any other persons appearing with
19 them starting with the Plaintiff.

20 MR. DINI: Yeah, good morning. My name is Jacob
21 Dini with the law firm Perkins Coie. I'm counsel for
22 Plaintiff, Bungie Inc., and I'm joined by Bungie's
23 In-house counsel, James Barker.

24 MR. MANN: And my name is Philip Mann. I'm with
25 the Mann Law Group on Bainbridge Island, Washington.

BRAD LAPORTE - 09/28/2023

Page 5

1 I represent all the Defendants in this action.

2 THE REPORTER: Mr. LaPorte, would you please
3 raise your right hand to be sworn?

4 AND THEREUPON,

5 BRAD LAPORTE

6 having been first duly sworn, testified as follows:

7 THE WITNESS: I do.

8 THE REPORTER: Thank you.

9 DIRECT EXAMINATION

10 BY MR. DINI:

11 Q. Okay. Good morning, Mr. LaPorte. As I said, my
12 name is Jacob Dini. I'm counsel for Plaintiff in this
13 case, which is Bungie. Thank you for agreeing to attend
14 remotely today.

15 Have you been deposed before?

16 A. Yes, I have.

17 Q. How many times have you been deposed before?

18 A. This will be the third time in deposition.

19 Q. Okay. And when were the other two depositions?

20 A. I -- so one was earlier this year, I believe it
21 was in March. And then the other time was last year. I
22 don't recall the month, but I did provide the actual date,
23 I just didn't commit them to memory.

24 Q. Okay. Have you been deposed remotely before?

25 A. Yes, I have.

1 to your opinions here?

2 A. So analysts cover, research analysts and
3 different influencers cover every facet of the market, to
4 include everything that we've been discussing. So those
5 clients that I work with, helping them navigate that
6 market of individuals that oversee and influence decisions
7 that are made in that area.

8 So Gartner covers and different influencers
9 cover everything across the sun, to include how video
10 games are created, how they're used, to include software
11 in general, and specifically even things like SBOM, or
12 software bill of materials, which is basically an analysis
13 of what soft -- what is actually comprised in software.

14 Q. I want to move down to the next paragraph here,
15 par -- the second full paragraph on page 4 of Exhibit 1,
16 which is your expert report. You say that you're an
17 expert in the following topics: digital forensics,
18 incident response, penetration testing, reverse
19 engineering, intrusion analysis, and malware analysis.

20 Did I read that right?

21 A. That's correct.

22 Q. I think you've used the term "digital forensics"
23 a couple of times that we've been talking so far. What
24 does dig -- digital forensics mean exactly?

25 A. Yeah. So providing -- can we just -- so

BRAD LAPORTE - 09/28/2023

Page 65
So

1 providing forensic analysis of different devices.
2 looking at the system and processes of a Windows, Mac,
3 Linux device or similar, smartphone systems and different
4 even to the extent of IOT devices and operational
5 technology devices.

6 Looking at the underlying systems and code to
7 provide analysis or insights into whatever use case that
8 you're trying to implement.

9 Q. Did you conduct digital forensics as part of
10 creating or coming to your opinions in this case?

11 A. Not as in pertinent of this case.

12 Q. So you -- so you didn't perform digital
13 forensics in this case?

14 A. What I provided was -- or my opinions are
15 derived from my own past experience and reviewing the
16 documents that were provided to me.

17 Q. And as part of doing that, did you perform any
18 digital forensics?

19 A. I used my own experience to provide my opinions
20 on the matter, which falls within the realm of the
21 underlying concepts of digital forensics. I did not use
22 digital forensics tools or conduct any civic analysis
23 outside of reading the material.

24 Q. So you didn't conduct an analysis as part of
25 preparing your report in today's case other than reading

1 the materials provided.

2 A. And my own experience.

3 Q. And you relied on your own experience.

4 A. Correct.

5 Q. Okay. So you didn't perform a digital forensics
6 analysis.

7 A. Correct.

8 Q. The next one here says incident response. I
9 think you've mentioned that a few times before. What does
10 incident response mean?

11 A. Yeah. So this is the actions that are -- that
12 take place after a security incident is detected, and
13 there are certain best practices. And typically an
14 organization has a standard operating procedure on how
15 they conduct this in terms of detecting and remediating
16 and responding to an incident that might occur.

17 Q. Did you -- did your experience with incident
18 response inform any of your opinions in this case?

19 A. I provided my -- it was included in the
20 expertise that I had that provided to the report that was
21 written.

22 Q. How is your incident response experience helpful
23 in preparing this report?

24 A. Primarily the underlying understanding of how
25 Windows systems operate and how one would go about and

BRAD LAPORTE - 09/28/2023

Page 67

1 conducting -- understanding how the overall -- the overall
2 ways that information is gathered and -- and analyzed.

3 Q. And how is that particularly relevant to your
4 opinions in this case?

5 A. Analyzing the documents and taking -- evaluating
6 and reading the documents, it did leverage my past
7 experiences with how incident response works and how that
8 connects to digital forensics.

9 Q. When you're conducting an incident response, is
10 there a process you go to or some sort of methods that you
11 rely on to determine how to respond to an incident?

12 A. There's a lot of different best practices that
13 are associated with it. There's -- there are a lot of
14 different ways to implement a certain response, but there
15 are some best practices around it.

16 Q. Did you rely on any of those best practices in
17 coming to your opinions in this case?

18 A. I -- yes, I did.

19 Q. Which ones?

20 A. We would have to go through the report to answer
21 that properly.

22 Q. Looking at page 7 of your expert report, when
23 you were discussing Bungie WDWA 0000368, did you rely on
24 any best practices for incident response to come to your
25 opinion here?

BRAD LAPORTE - 09/28/2023

Page 99

1 procedures around incident response and digital forensics
2 and some of the other core concepts that we talked about
3 in the first part of this deposition.

4 Q. Did you attempt to duplicate the analysis
5 conducted by Mr. Kraemer or were you just trying to verify
6 the conclusions he came to?

7 A. I verified the conclusions that he came to.

8 Q. Okay. Did you talk to Mr. Kraemer at all about
9 the -- about his expert opinions?

10 A. I did not.

11 Q. Did you communicate through any means with
12 Mr. Kraemer to validate any of his expert opinions?

13 A. I did not.

14 Q. Did you communicate through an intermediary?
15 For example, did you provide questions to someone who then
16 gave questions to Mr. Kraemer?

17 A. I had no questions.

18 Q. Okay. So you didn't talk to Mr. Kraemer at all
19 about the methodology through which he arrived at his
20 opinions?

21 A. I did not.

22 Q. Did you talk to Mr. Kraemer about how he arrived
23 at his opinions at all?

24 A. It was very clear through the report I did
25 not -- it did not require communication with Mr. Kraemer.

BRAD LAPORTE - 09/28/2023

Page 100

1 Q. Did you determine whether any of Mr. Kraemer's
2 opinions expressed in his report were not valid?

3 A. Yes.

4 Q. Were any of his opinions not valid?

5 A. I don't know if it -- it would classify as an
6 opinion, but there -- there was two -- two items that I
7 identified that I wasn't able to find any information on.

8 Q. What were those two items?

9 A. One is I was not able to -- so this is page 8 of
10 my report, excuse me.

11 Q. Uh-huh.

12 A. The date, I wasn't able to find a reference to
13 the date of March 8th, or 2022/03/08, but I was able to
14 find what appeared to be the correct date of 2022/09/15.

15 Q. You said there was another invalid opinion that
16 Mr. Kraemer expressed. What was that?

17 A. It was not necessarily an opinion, but in the
18 Kraemer report there is a mention that --

19 Q. We're talking about Exhibit 3 of Mr. Kraemer's
20 report?

21 A. Hold on one second, please. Yes, that one. On
22 page 5, third sentence from the bottom.

23 Q. What does it start with?

24 A. "These drivers are utility tools used by Phoenix
25 Digital Group." There's no evidence in any of the

BRAD LAPORTE - 09/28/2023

Page 101

1 documentation that was provided that mapped any drivers
2 that were mapped to any utility tools by Phoenix Digital
3 Group.

4 I did not mention it in my report because I
5 figured the information was moot and not really relevant,
6 but those are the two items that I did not agree with in
7 his report.

8 Q. Okay. So just to clarify, you disagree with the
9 third sentence in the last paragraph on page 5 of Exhibit
10 3, Mr. Kraemer's report, "These drivers are utility tools
11 used by Phoenix Digital Group"?

12 MR. MANN: Object to the form.

13 THE WITNESS: Correct.

14 BY MR. DINI:

15 Q. What was the answer?

16 A. Correct.

17 Q. And you also, turning back to your report,
18 Exhibit 1, page 8, the fourth paragraph, the first couple
19 sentences there highlight --

20 A. Uh-huh.

21 Q. -- a difference between your opinion and
22 Mr. Kraemer's opinion.

23 A. Specifically the date was different. But once
24 again, I think it's moot.

25 Q. Other than these two issues, are your expert

BRAD LAPORTE - 09/28/2023

Page 102

1 opinions the same as those offered by Mr. Kraemer?

2 A. That's correct.

3 Q. Are they exactly the same?

4 A. Can you clarify "exactly"?

5 Q. Do they differ in any respect from Mr. Kraemer's
6 other than the two instances that we identified already?

7 A. I will respond by saying I agree with everything
8 else that is in the Kraemer report.

9 Q. Do you have any opinions in your expert report,
10 other than those two that we already talked about, that
11 are in addition to those expressed by Mr. Kraemer? In
12 other words, did you add any new opinions to your expert
13 report not included in Mr. Kraemer's?

14 A. No, I did not add any additional information to
15 the -- this case.

16 Q. That's a no, you did not add any new opinions to
17 Mr. Kraemer's opinions in this case?

18 A. That's correct.

19 Q. Okay. Let's turn to the second issue here that
20 you were asked to investigate. The second issue, if we're
21 looking back at page 5 of your expert report in Exhibit 1,
22 it says, "whether forensic evidence appears to support the
23 conclusion that Plaintiff, Bungie, Inc., reverse
24 engineered, decompiled and/or otherwise analyzed a certain
25 loader software product distributed by Phoenix Digital."

BRAD LAPORTE - 09/28/2023

Page 180

1 with my statement and my report. My response to that is
2 he has not reviewed my report and, therefore, I would not
3 have an opinion of what I've stated.

4 Q. Can you point to me where, if anywhere, in Mr.
5 Kraemer's report he expressed the same opinion that we
6 just discussed in your report on page 8 about Mr. Guris'
7 analysis?

8 A. Mr. Kraemer agreed, yeah, and I agree that
9 Virus -- the first statement of this paragraph that
10 contained VirusTotal shows this file to contain no
11 detected malware or flagged for malicious content that a
12 specific driver or file was to be submitted to VirusTotal
13 on the specific date.

14 I clarified the dates, and then really I
15 wanted -- I'm pointing out the obvious in the statement
16 that the way that Mr. Guris obtained this file, it's, for
17 one, it was owned by a different entity at this date.

18 So the file, if you map up the dates of these
19 two -- so there is -- when this document was taken is a
20 different date than the date of when the zip file was
21 done, the analysis was done.

22 Q. So I'm not asking you number one.

23 A. What?

24 Q. No, go ahead. Finish your answer. I apologize.

25 A. Item number one is we agree on the VirusTotal

BRAD LAPORTE - 09/28/2023

Page 181

1 results. Number two is that this Exhibit 409, the date of
2 the scan I believe is a different date than when this file
3 was taken, which was 2000 -- September 15th, 2022.

4 And then the other aspect is that when this zip
5 file was taken, it was not identified how it was taken,
6 where it was taken, the exact location. I did not receive
7 a copy of the zip file to inspect its contents. So where
8 it came from, you know, what website he actually --
9 Mr. Guris went to and what exact zip file was taken from
10 that could not be verified.

11 The other thing is the owner of it is an entity
12 out of the Ukraine that currently owns that website on the
13 date that he took this zip file.

14 Q. Okay. So I understand that that is your expert
15 opinion that you are asserting now. My question is where
16 in Mr. Kraemer's expert report is that same opinion
17 expressed, if anywhere?

18 And I'm talking about, to clarify, the part of
19 the opinion that says, "It is my expert opinion that there
20 is no way to provide any definitive evidence or
21 conclusion" all the way through the end of that paragraph.
22 That's what I want you to point me in Mr. Kraemer's
23 report, if anywhere.

24 A. One second. The -- Mr. Kraemer doesn't
25 specifically address Mr. Guris' process and the way that

BRAD LAPORTE - 09/28/2023

Page 182

1 he goes about that. And that might be due to the fact
2 that he doesn't have an extensive digital forensics
3 background in terms of process and change of -- basically
4 maintaining control over how files are obtained and
5 analyzed and that's -- so that is one item.

6 And for whatever reason, he did not identify or
7 match up the -- the dates between these two sources. So
8 the zip file analysis that was identified in the Guris
9 expert report and then the specific file that was produced
10 are from different time frames.

11 Q. And the zip file analysis that you offer an
12 expert opinion on in your report on page 8, the fourth
13 paragraph, that second half of that paragraph is not an
14 opinion that Mr. Kraemer expressed in his report, is it?

15 A. Not explicit.

16 Q. Or implicitly.

17 A. I don't know under -- Mr. Kraemer is not here to
18 comment on that, and I would state that it is -- give me a
19 moment. My response is that Mr. Kraemer most likely
20 didn't know. And he didn't review my expert report and,
21 therefore, couldn't provide this level of insight.

22 He was more focused on the other elements that
23 he mentions in his report and did not address this in his
24 report.

25 Q. Mr. LaPorte, I want to look at the third

BRAD LAPORTE - 09/28/2023

Page 183

1 paragraph here on page 8, specifically the second
2 sentence. It says, "There's no way to know from Exhibit C
3 what these files contain or what their purpose may be."

4 Did I read that right?

5 A. Correct.

6 Q. Okay. I want to go back now to Exhibit 7, which
7 is Bungie WDWA 0000409. We talked earlier about your
8 familiarity with certain reverse engineering tools,
9 including ReClass, right?

10 A. That's correct.

11 Q. You've heard of ReClass, correct?

12 A. Correct.

13 Q. It's a pretty popular reverse engineering tool?

14 A. Correct.

15 Q. It's publically available on GitHub?

16 A. That's correct.

17 Q. If we look at row three of Exhibit 7 here, in
18 the file name it says ReClass, right?

19 A. Correct.

20 Q. Same with row four and row five, we got the name
21 ReClass?

22 A. Can you Zoom in, please?

23 Q. Yes. Does that help?

24 A. Yes, thank you. Row four and five, yes,
25 correct.

BRAD LAPORTE - 09/28/2023

Page 184

1 Q. Okay. Scrolling down a little further, rows 32
2 and 33 we see the -- the file name there as renamed to
3 ReClass. You see that?

4 A. Correct.

5 Q. So from that information, is it -- isn't it
6 possible to determine what that system driver is being
7 used for, that's being used for reverse engineering?

8 A. Not from this document.

9 Q. Why not?

10 A. It doesn't have enough information.

11 Q. What more information would you need?

12 A. Specifically what's happening and more -- you'd
13 have to do further analysis.

14 Q. Okay. Let's talk about another document. I'll
15 drop what we'll mark as Exhibit 8 into the chat. Okay,
16 open that one up.

17 (Plaintiff's Exhibit 8 marked.)

18 BY MR. DINI:

19 Q. Mr. LaPorte, do you recognize this document,
20 Exhibit 8?

21 A. One moment. Yes, this is Counterclaim Exhibit
22 D.

23 Q. At the bottom of page 2 it has a Bates number,
24 Bungie WDWA 0000367, is that right?

25 A. One second, I -- I can barely read that.

BRAD LAPORTE - 09/28/2023

Page 185

1 Q. Oh, yeah. It's at the -- it's at the bottom of
2 the second page. It's the biggest text on the page.

3 A. I'm sorry, repeat your question. What am I
4 looking for?

5 Q. At the bottom of page 2 of Exhibit 8 it says
6 "Bungie WDWA 0000367."

7 A. Oh, yes.

8 Q. Okay, great.

9 A. Sorry.

10 Q. Yeah. How is this document relevant to your
11 opinions?

12 A. Basically in here it references Aimjunkies'
13 binaries were found.

14 Q. Where does it say that?

15 A. Oh, sorry, that's from 409. One second, please.

16 Q. Mr. LaPorte, are you unsure how this document is
17 relevant to your expert opinion?

18 A. I just need a moment to review this again. This
19 document, which it was provided to me with the
20 understanding that it was from Bungie, specifically in
21 here it has mentions to the C drives to Mr. May's desktop
22 and then specifically having the ReClass.net kernel log-in
23 reverse engineering tool.

24 And this basically, this file identifies and
25 shows that there was a -- this tool was used when combi --

BRAD LAPORTE - 09/28/2023

Page 186

1 when compiling the reclasskernel64.systeminternals file.

2 And I agree with Mr. Kraemer that this driver, you know,
3 wouldn't be attached necessarily in the game and it could
4 be located under other means.

5 It's not exactly explained in this document,
6 which I mention in the report, which is why it took me a
7 second to review this again.

8 Q. You don't know what means were used to acquire
9 that information, do you?

10 A. I do not because it's not disclosed how this
11 information was gathered.

12 Q. Okay. I want to refer back to Exhibit 1, which
13 is your report pages 5 and 6. Pages 5 and 6 of your
14 report you list about 28 documents here that you reviewed
15 in connection with your analysis of this matter, is that
16 right?

17 A. That's correct.

18 Q. And we talked about your opinions with respect
19 to the Amended Answer and Amended Counterclaims, number
20 five, Bungie WDWA 368, number six, number 409, number
21 seven, number eight, number 21, 22, 23, and then you
22 mentioned the expert report of Steven Guris, right?

23 A. Correct.

24 Q. Okay. Other than those documents that we
25 specifically discussed today and that I just listed, do

1 you have any opinions about what any of the other
2 documents listed here show?

3 A. No, not that I submitted in the report. That's
4 why I didn't mention it.

5 Q. Okay. So you don't have any opinions about any
6 of the documents other than those that we specifically
7 discussed today and that I just listed in my question
8 previously?

9 A. That's correct.

10 MR. DINI: Okay. I want to take five minutes.
11 I think we're close to being done here, but let's
12 take a five-minute break just to tie up some loose
13 ends. If we can, go off the record.

14 THE VIDEOGRAPHER: This will end file five in
15 the depo -- or file six in the deposition of Brad
16 LaPorte. Off the record at 1:41.

17 (Recess taken from 1:14 p.m. to 1:48 p.m.)

18 THE VIDEOGRAPHER: This begin files seven in the
19 deposition of Brad LaPorte. Back on the record
20 1:48.

21 BY MR. DINI:

22 Q. Okay. Just a couple quick questions,
23 Mr. LaPorte. I want to focus back again on Exhibit 1,
24 which I'm sharing my screen with you now, the discussion
25 of VirusTotal on page 8.

BRAD LAPORTE - 09/28/2023

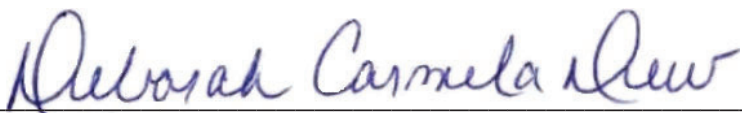
Page 191

1 CERTIFICATE OF OATH

2 STATE OF FLORIDA)
3)
4 COUNTY OF PALM BEACH)

5 I, Deborah Carmela Dew, FPR, Court Reporter and
6 Notary Public, State of Florida, certify that BRAD LAPORTE
7 appeared remotely before me via Zoom videoconference,
8 produced identification, and was duly sworn on the 28th
9 day of September, 2023.

10 Witness my hand this 2nd day
11 of October, 2023.

12
13
14
15 

16 Deborah Carmela Dew, FPR
17 Notary Public, State of Florida
18 Commission No.: HH125890
19 Expires: August 21, 2025

20 PERSONALLY KNOWN _____
21 OR PRODUCED IDENTIFICATION XXXXX
22 TYPE OF IDENTIFICATION PRODUCED: Driver's License
23
24
25

BRAD LAPORTE - 09/28/2023

Page 192

1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)
3)
4 COUNTY OF ST. LUCIE)

5 I, Deborah Carmela Dew, Florida Professional
6 Reporter, do hereby certify that I was authorized to and
7 did remotely stenographically report the videotaped
8 deposition of BRAD LAPORTE; that a review of the
9 transcript was requested; and that the foregoing
10 transcript, pages 1 through 190 is a true record of my
11 stenographic notes.

12 I FURTHER CERTIFY that I am not a relative,
13 employee, or attorney, or counsel of any of the parties,
14 nor am I a relative or employee of any of the parties'
15 attorney or counsel or counsel connected with the action,
16 nor am I financially interested in the action.

17 DATED this 2nd day of October, 2023.
18
19

20 
21

22 _____
Deborah Carmela Dew,
23 Florida Professional Reporter
24
25